

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

77-5004

Received May 3, 1977

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Fredrick H. Block

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

-----X NO. 77-5004
HOUSEHOLD FINANCE CORPORATION,

Plaintiff-Appellant,

-against-

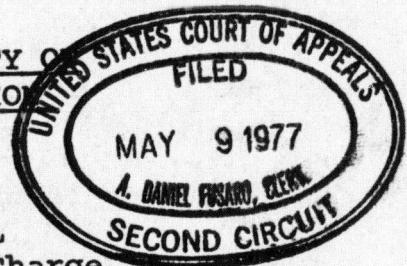
KEITH ORIN DANNS a/k/a KEITH O. DANNS
a/k/a KEITH DANNS,

Defendant-Appellee.

-----X

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE LEGAL AID SOCIETY OF
NEW YORK CITY, CIVIL DIVISION
AS AMICUS CURIAE



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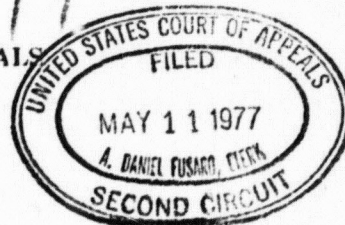
Counsel for Amicus Curiae

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UNITED STATES COURT OF APPEALS

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Eleventh day of May, one thousand nine hundred and seventy-seven.

In re Keith Orin Danns, a/k/a Keith O. Danns, a/k/a Keith Danns,

Bankrupt,

Household Finance Corporation,

Plaintiff-Appellant,

v.

Keith Orin Danns, a/k/a Keith O. Danns, a/k/a Keith Danns,

Defendant-Appellee.

It is hereby ordered that the motion made herein by counsel for the

appellant

~~appellee~~

~~petitioner~~

~~respondent~~

by notice of motion dated May 6, 1977 to strike ^{so much of} the brief of the Legal Aid Society of New York City ^{as appears after page 24.} as appears after page 24.

be and it hereby is granted.

~~XXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~

Thomas J. Meskill

Circuit Judges

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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HOUSEHOLD FINANCE CORPORATION,

Plaintiff-Appellant,

-against-

KEITH ORIN DANNS a/k/a KEITH O. DANNS
a/k/a KEITH DANNS,

Defendant-Appellee.
-----X

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: No. 77-5004
:

BRIEF FOR THE LEGAL AID SOCIETY
OF NEW YORK CITY, CIVIL DIVISION,
AS AMICUS CURIAE

PRELIMINARY STATEMENT

This is an appeal by Household Finance Corporation (hereinafter "HFC") from an opinion and order of the United States District Court for the Eastern District of New York (Hon. Edward R. Neaher) dated January 17, 1977, which affirmed an order of the Bankruptcy Court (Hon. C. Albert Parente) dated July 2, 1976, and limited the amount held non-dischargeable under Section 17 a (2) of the Bankruptcy Act to the amount of "fresh cash" the creditor advanced on the basis of the debtor's false financial statement.

This brief is filed on behalf of The Legal Aid Society of New York City, Civil Division, as Amicus Curiae. Annexed hereto is a copy of the written consent by the parties to participation of Amicus pursuant to Rule 29 of the Federal Rules

of Appellate Procedure, dated April 6, 1977, and previously filed in this Court.

ISSUE PRESENTED ON APPEAL

The issue presented for review by this Court on appeal is whether a creditor who advances additional money to a debtor as a result of a false financial statement is entitled under Section 17 a (2) of the Bankruptcy Act to avoid the discharge of more than the "fresh cash" advanced in connection with the statement.

STATEMENT OF THE CASE

A. STATEMENT OF FACTS AND PROCEEDINGS BELOW

This is an appeal by Household Finance Corporation (HFC) from an opinion and order of the United States District Court for the Eastern District of New York (Hon. Edward R. Neaher) dated January 17, 1977, which affirmed an order of the Bankruptcy Court (Hon. C. Albert Parente) dated July 2, 1976. These orders denied the application of HFC pursuant to Section 17 of the Bankruptcy Act to declare non-dischargeable the entire debt in the amount of \$2,189.31 and ruled that the discharge was barred only as to the "fresh cash" in the amount of \$483.

On January 24, 1975 Danms, already in debt to HFC in the amount of \$2019.37, obtained a loan for additional monies which increased his total obligation to HFC to \$3261.96. After subtracting the amount of the existing loan and finance and other

charges, Danms received \$483 additional money from HFC.

The Bankruptcy Judge found that the financial statement submitted to HFC by Danms in connection with this loan was false and awarded HFC \$483, the amount received by Danms as a result of the false financial statement, but permitted the discharge in bankruptcy of the outstanding balance of the prior loan. (A 71-72, 79-80) The decision of the Bankruptcy Judge was affirmed on appeal to the District Court. (A 81-84) In granting the discharge on the portion of the pre-existing debt untainted by fraud, Judge Neaher found that there was not a true "extension" or "renewal" under Section 17 a (2) of the Bankruptcy Act, nor had the debtor truly "obtained" credit within the meaning of the Act in view of New York Banking Law Section 352 requiring consolidation of small loans, and that it was "not erroneous to find that the new cash represented the actual pecuniary loss flowing from reliance upon the fraudulent financial statement." (A 83-84)

B. INTEREST OF THE AMICUS CURIAE

The Legal Aid Society is a private, non-profit legal assistance agency which, since 1876, has sought to provide quality legal representation to persons living in New York City who cannot afford to pay a private lawyer. The Civil Division of the Society has a staff of 58 attorneys, located in offices in all five boroughs, who provide assistance to more than 25,000 people a year and appear in civil cases in all trial courts

in New York City and in the state and federal appellate courts.

In handling a high volume of bankruptcy cases and of consumer cases generally over a period of many years,* the Civil Division of The Legal Aid Society has developed a substantial and unique knowledge and expertise concerning the bankruptcy problems of low-income persons and concerning the character and circumstances of consumer transactions which give rise to these bankruptcies. In the judgment of the Amicus, the issue presented on this appeal can be properly decided by this court only if presented in the context of the character of the consumer transactions which typically lead to the bankruptcies of low-income persons.

The persons whom the Society represents in voluntary bankruptcy proceedings represent a cross-section of persons who are hardest hit by severe economic constraints -- persons who have lost or are unable to secure a job, persons whose families are burdened with unusual health problems, women whose husbands have deserted and left them with overwhelming joint debts, unwed mothers, members of the armed services. Though of vastly differing backgrounds, these debtors and eventual bankruptcies share in common the fact that they are often driven to insolvency by creditors' enticing them deeper into debt, and to bankruptcy by the seemingly

* In its last fiscal year alone, the Civil Division handled close to 2400 matters involving consumer problems, including 856 bankruptcy matters, 126 personal loan cases, and 361 post-judgment execution problems.

unending and relentless pressure of creditors pursuing collection. Techniques of creditor harassment directed at the consumer-debtor may include endless pursuit of the debtors' friends, neighbors, relatives and employers. The steady escalation of the consumers' indebtedness, when combined with their inability to make inroads into the mounting and astronomical charges and the heavy social and psychological pressure to obtain respite, eventually force these persons into bankruptcy.

The road to consumer bankruptcy is often paved with the less-than-good intentions of consumer credit companies. In this regard, the practical experience and knowledge of the Society accords with the observations of many commentators,^{*} and compels the conclusion that overreaching practices of small loan companies often calculatingly ensnare the low-income consumer into deeper indebtedness and simultaneously aim at eventually avoiding discharge of the indebtedness in bankruptcy court. Invariably, creditors such as small loan companies dictate the terms in these transactions and use their own printed forms. Rarely has Amicus

^{*} See, e.g., Countryman, The New Dischargeability Law, 45 Am. Bankr. L.J. 1 (1971); Schuchman, The Fraud Exception in Consumer Bankruptcy, 23 Stan. L. Rev. 735 (1971); Schuchman, Impact Analysis of the 1970 Bankruptcy Discharge Amendments, 51 N.Car. L. Rev. 233 (1972). See also, Hearings on H.R. 13, H.R. 106, and H.R. 92 Before a Subcomm. of the Senate Comm. on the Judiciary, 85th Cong. 2d Sess. 89-100 (1958).

seen instances of arm's length negotiation between equals or any equality of bargaining power. Many of the Society's clients are functionally illiterate or unable to comprehend even simple documents when printed only in English.

These small loan companies regularly use a financial statement as part of the application process. This is so, notwithstanding the lender's continuous course of dealings over many years with a particular debtor. In further extending loans, rarely, if ever, are credit checks made with credit bureaus. Typically, these financial forms are prepared under the direction of the agent for the lender. It is not unusual in this situation for the importance of outstanding debts to be deemphasized or for the applicant to actually be instructed to write on the form the magical words, "I have no other debts."

Nor, in our experience, are consumers encouraged to pay off outstanding loans before new money is advanced. Indeed, the opposite is true. Consumers are actually invited to renew loans whether or not their credit is good or whether and even if they are delinquent in payments. In the case of a debtor who is reasonably timely with payments, it is not uncommon for the small loan company to send notice to him urging him to borrow additional money which will then result in consolidation of the loans. Even in the

case of a seriously delinquent debtor, the collection agent may invite the debtor to have the loan rewritten so that payments to the account will continue.*

A transaction where a loan is rewritten** may involve great variations in the sums of "fresh cash," if any, that are advanced, ranging upward from sums under \$100. The process becomes interminable. Some consumers are involved in a series of transactions lasting as long as fifteen to twenty years in which loans are constantly being revised and rewritten by the small loan companies. Nor is it uncommon for the amount of "fresh cash" advanced to the borrower based on his false financial statement to be relatively small compared to the original indebtedness with which it is consolidated.

* Even the discharge of the debtor's loans in bankruptcy has not always concluded the creditor's vigorous pursuit of collection. Thus, New York State Attorney General Louis J. Lefkowitz recently charged that Household Finance Corporation, the appellant herein, has taken "unconscionable advantage" of legally bankrupt New Yorkers by inducing them to pay back old loans which have already been discharged in bankruptcy as a condition to obtaining new loans. See attached Final Consent Judgment in State of New York v. Household Finance Corp., Docket No. 40630/77 (N.Y. Sup. Ct., Gellinoff, J. March 15, 1977) and N.Y. Times, March 16, 1977, p. D16, col. 1.

** There is widespread creditor use of renewals, resettlings, and new loans to pay off old loans. See Schuchman, The Fraud Exception in Consumer Bankruptcy, 23 Stan. L. Rev. 735, 761-62 (1971). See also In the Matter of Schuerman, 367 F.Supp. 1347, 1350 (E.D. Ky., 1973).

The instant appeal presents a question of interpretation of the bankruptcy statute which is of vital importance to low-income consumers: namely, the extent of a bankruptcy discharge where there has been additional money advanced on the basis of a false financial statement by a debtor and that new loan is consolidated with a previously existing indebtedness untainted by such statement. The interest of the Amicus here is in presenting to this Court a practical perspective on this important and far-reaching issue. Amicus respectfully submits that it is in a unique position to offer this perspective because of its experience and expertise in representation of low-income consumers forced into bankruptcy. Amicus submits that the issue presented here should not be decided in a vacuum, but rather that it must be considered in light of the underlying purposes of the Bankruptcy Act and the practical impact on the thousands of low-income consumers driven to bankruptcy who, if the decision of the court below is reversed, may obtain only minimal relief from the crushing burdens of their debts.

SUMMARY OF ARGUMENT

The numerous federal court decisions limiting the non-dischargeability in bankruptcy to the "fresh cash" advanced by the creditor on the basis of a false financial statement are correctly decided. A reversal of the District Court's decision in this case would seriously undermine the specific Congressional purpose at the heart of its reforms to the bankruptcy law in 1960 and 1970 and would thwart the fundamental purpose generally underlying the Bankruptcy Act to give a debtor a "... new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." Local Loan Company v. Hunt, 292 U.S. 234, 244-45 (1934); Lines v. Frederick, 400 U.S. 18 (1970).

Amicus' considerable experience in the bankruptcy and related consumer fields, and its knowledge of the relevant commercial practices, leads this Amicus to conclude that adoption of the position urged upon this Court by HFC would, as a practical matter and contrary to the purpose of Congress, prevent the discharge of debts of thousands of low-income consumers and would encourage the very practices of unscrupulous lenders in securing false financial statements that Congress intended to curb.

ARGUMENT

TO PERMIT APPELLANT HFC TO AVOID THE DISCHARGE IN BANKRUPTCY OF APPELLEE DANNS' ENTIRE INDEBTEDNESS TO IT, RATHER THAN TO LIMIT NON-DISCHARGEABILITY TO THE FRESH CASH ADVANCED ON THE BASIS OF APPELLEE'S FALSE FINANCIAL STATEMENT, WOULD UNDERMINE THE CONGRESSIONAL PURPOSES OF THE FEDERAL BANKRUPTCY LAW AND WOULD RESULT IN THE UNINTENDED NON-DISCHARGEABILITY OF SUBSTANTIAL DEBTS OF CONSUMER BANKRUPTS.

Plaintiff Household Finance Corporation (HFC) has urged this Court to adopt a wooden construction of Section 17 a (2) of the Bankruptcy Act that is not only technically incorrect, but as well flies in the face of legislative history and seriously undermines the fundamental purposes of the Bankruptcy Act, as recognized by a growing body of decisional law from the federal bankruptcy and district courts. In the amendments to Sections 14 c (3) and 17 a (2) of the Bankruptcy Act in 1960 and the subsequent grant in 1970 of exclusive jurisdiction to the bankruptcy courts to determine the effect of the Section 17 a (2) discharge, Congress had as its overriding concern relief to the individual consumer bankrupt from the documented pattern of manipulative practices by unscrupulous lenders in abusing the false financial statement exception to bankruptcy discharge.

HFC's theory that the 1960 Celler Amendment "dramatically laid the fresh cash issue to rest" (Appellant's Brief at 12) is patently untenable and is itself graphically belied by the legislative history. In fact, Congress did not specifically address

or acknowledge the "fresh cash" problem at all either in its 1960 or 1970 amendments or in the extensive hearings that preceded them.

Equally absurd is HFC's notion (Appellant's Brief at 11) that Congress was in any mood to bargain with small loan companies to guarantee their unlimited use of false financial statements under Section 17 a (2). Indeed, if anything, the exact opposite is true. Congress was intent in both 1960 and 1970 on curbing serious abuses by these very same unscrupulous lenders that condoned and even encouraged false financial statements for use in bankruptcy proceedings. Few devices have been so resourcefully used to the advantage of creditors or have been the subject of such continuing Congressional scrutiny as the false financial statement. There is great irony in HFC's coming to this Court presuming to divine and profit from the will of Congress, when it was HFC's own practices in this area, first called to the attention of Congress in 1955, which heralded the start of Congressional inquiry into creditor abuses. See Hearings on H.R. 13, H.R. 106, and H.R. 982 Before a Subcomm. of the Senate Comm. on the Judiciary, 85th Cong., 2d Sess. 54 (1958). [hereinafter cited as 1958 Hearings].

Prior to 1960, an obligation incurred by an individual non-commercial bankrupt on the basis of a false financial statement could either result in a complete denial of a discharge of

all debts under Section 14 c (3) by the bankruptcy court or in the non-dischargeability of the particular debt in question under Section 17 a (2) by a State court. The harshness of the penalty under 14 c (3) in the case of an individual non-commercial bankrupt was readily apparent, and experience had shown it to be subject to abuse at the hands of creditors.

An unscrupulous lender armed with a false financial statement has a powerful weapon with which to intimidate a debtor into entering into an agreement in which the creditor agrees not to oppose the discharge in return for the debtor's agreement to pay the debt in full after discharge. The creditor may also accomplish his purpose of preserving his debt by not opposing the discharge and then suing in a State court on the ground that the debt is not dischargeable. Testimony before the Subcommittee on Bankruptcy and Reorganization by experts in bankruptcy law indicates that unscrupulous lenders have frequently condoned or even encouraged the issuance of statements omitting debts with the deliberate intention of obtaining a false agreement for use in the event that the borrower subsequently goes into bankruptcy.

Even where the creditor has had no part in the issuance of a false financial statement, the exercise of his right to bar the discharge completely results in a windfall for other creditors who were not even aware of such a statement. Debts which are dischargeable are not discharged solely because one of many debts was induced by a false financial statement. H.R. Rep. No. 1111, 86th Cong., 1st Sess. 2 (1959).

The 1960 amendments to Section 14 c (3) and 17 a (2), eliminating the false financial statement ground for the complete denial of a discharge for a non-business bankrupt, were entirely

non-controversial. See 1958 Hearings, supra.

The amendment was accomplished in part by removing from Section 14 c (3) the phrase:

"obtaining money or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition"

and adding to Section 17 a (2) the following substantially similar language:

"or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive,"
S. Rep. No. 1688, 86th Cong., 2d Sess. 6 (1960).

HFC's claim that the use in 17 a (2) of the "extension or renewal" language from 14 c (3) was intended to adopt the State view of a few pre-1960/court decisions decided under the earlier version of 17 a (2) is without any redeeming rationality. Typically, these decisions turned on the State court's notion of whether the action for a debt not discharged under 17 a (2) was based on a promissory note or on fraud. See, e.g., Nat'l Finance Co. v. Valdez, 11 Utah 2d 339, 359 P 2d 9 (19 65). Nor was the body of law under the pre-1960 version of Section 14 c (3) finely tuned to the various nuances of the fresh cash question, since the issue under 14 c (3) was the complete denial of discharge. See, Lee, Leading Case Commentary, 46 Am. Bankr. L.J. 245, 251 (1972). If anything,

the qualification of the "extension or renewal" language by the concepts of "reliance" and "intent to deceive" evinces a clear Congressional intent to narrow the operation of 17 a (2) after 1960.*

As thoroughly discussed in appellee's brief at 6-8, HFC's view of reasons for adding the "extension or renewal" language to 17 a (2) receives no support whatsoever from the testimony in 1958 of Linn K. Twinem, Esquire, then attorney for Beneficial Finance Company and the chairman of the American Bar Association bankruptcy committee on current decisions who saw "no particular reason" for the changes to 17 a (2).** 1958 Hearings, supra, at 84. Accord, Lee, Leading Case Commentary, 46 Am. Bankr. L.J. 245 (1972). Further, Bertram Wolfe, a referee in bankruptcy and professor of law, testifying on behalf of the National

* A broad interpretation of the concepts of "extension or renewal" makes sense only in the context of Section 14 c (3). In striking contrast to its forgiving attitude toward the consumer bankrupt who may have filed a false financial statement to obtain credit, Congress had little sympathy for the dishonest businessman to whom the harsh Section 14 c (3) penalty was originally directed. See 1958 Hearings, supra, at 50.

The situation is somewhat different in the case of a business bankrupt. The businessman is more likely to be aware of the severe consequences to him of issuing a false financial statement. His ordinary business records enable him to produce a more accurate statement than a householder who may have a multitude of small debts and no records. Furthermore, the financial statement issued by a businessman is frequently for the purpose of establishing credit standing

(footnote cont'd next page)

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(Footnotes cont'd from previous page)

*(cont'd) in the community. His creditors may never see the financial statement itself.
H.R. Rep. No. 1111, 86th Cong., 1st Sess. 2-3 (1959).

In the case of the businessman, the primary Congressional concern is to protect the public from injury by his dishonest practices and not, as in the case of the individual bankrupt, giving the debtor a fresh start to life.

** HFC's citation of the remarks by Landon Chapman (Appellant's Brief at 11-12) is an especially slender reed upon which to rest its case. Mr. Chapman's views on how the amendments to 17 a (2) would affect the fresh cash issue were volunteered and were purely his own random thoughts as an individual lawyer representing bankrupts, not the view of any of the many organizations that testified or commented on the proposed legislation nor the views of all or any part of the Congress. Senator Ervin's casual and clarifying question aside, Mr. Chapman's comments on this point received no acknowledgement or even an expression of interest or understanding by the Congressional committee. Further, his remarks came at the end of a long day of detailed testimony before the Committee on key aspects of the proposed legislation and after his own extremely strong testimony documenting abusive practices of unscrupulous lenders. See 1958 Hearings, supra, at 89-100.

Bankruptcy Conference noted, "We see no necessity for that addition... It simply explains that included in a liability for obtaining money by false pretenses or false representations... is the giving of a false financial statement." 1958 Hearings, supra, at 41. Perhaps, the most rational reason for the transfer of language from 14 c (3) to 17 a (2) is given by Judge Lee in his article. "The real intent was to preserve the validity of existing case law [concerning Section 14 c (3)] upon repeal of Section 14 c (3) of the Act in its entirety as contemplated by the original version of the Celler Amendment." Lee, supra, 46 Am. Bankr. L.J. at 251. Accord, In the Matter of Schuerman, 367 F.Supp. 1347, 1349 (E.D. Ky., 1973).

In its passage of the 1960 amendments, Congress simply did not address or implicate the fresh cash issue. This fact is not surprising when viewed in the context of the 1958 Congressional hearings on proposed amendments to the Bankruptcy Act. There, the discussion concerning the completely uncontroversial amendments to Section 14 c (3) and 17 a (2) was entirely overshadowed by the controversy surrounding the precursor to the 1970 amendments to the Bankruptcy Act -- the proposal to empower bankruptcy courts to determine dischargeability of debts and render judgments thereon with a concomitant loss of jurisdiction to State courts.*

* The fact that none of the many organizations concerned with bankruptcy legislation highlighted the fresh cash problem to Congress
(footnote cont'd next page)

Finally, in 1970 Congress further strengthened the discharge provisions of the Act by adding Section 17 c to empower federal courts of bankruptcy to determine dischargeability of individual debts and render judgments thereon. Again, the motivating force for the enactment was the desire to afford relief to individual debtors subjected to widespread abuse by creditors armed with the allegedly false financial statement. **

* (footnote cont'd from previous page)

also makes sense against this backdrop. Creditors predictably remained silent on this point. They were hardly in a position to bargain, in the face of the explicit Congressional recognition of their abuses of the false financial statements. To focus on the fresh cash problem arising under Section 17 a (2) would incur the risk of subjecting their practices concerning extensions and renewals and even the State court decisions in their favor to searching Congressional scrutiny in light of the overriding purpose of the Bankruptcy Act. Nor would supporters of the controversial extension of jurisdiction to bankruptcy courts find it necessary to address the split of State court authority under Section 17 a (2) on the fresh cash issue, since there would be ample opportunity for the bankruptcy courts and the federal judiciary to resolve these complex issues upon passage of their proposals.

** See Countryman, The New Dischargeability Law, 45 Am. Bankr. L.J. 1 (1971); See also, Hearings on S. 578, S. 1316, H.R. 2517, H.R. 2518 and H.R. 2519 before Subcommittee of Senate Judiciary Committee, 90th Cong., 1st Sess. (1967); Hearings on S.J. Res. 88, H.R. 6665 and H.R. 12250 before Subcommittee of House Judiciary Committee, 91st Cong., 1st Sess. (1969).

The purpose of the proposed legislation is to effectuate more fully the discharge in bankruptcy by rendering it less subject to abuse by harrassing creditors. Under present law creditors are permitted to bring suit in State courts after a discharge in bankruptcy has been granted and many do so in the hope the debtor will not appear in that action, relying to his detriment upon the discharge. Often the debtor in fact does not appear because of such misplaced reliance, or an inability to retain an attorney due to lack of funds, or because he was not properly served. As a result, a default judgment is taken against him and his wages or property may again be subjected to garnishment or levy. All this results because the discharge is an affirmative defense which, if not pleaded, is waived.

The proposed legislation is meant to correct this abuse. Under it, the matter of dischargeability of the type of debts commonly giving rise to the problem, that is, those allegedly incurred as a result of loans based upon false financial statements, will be within the exclusive jurisdiction of the bankruptcy court...

The actual focus of the bill is to give greater effect to the discharge for those who need it most, that is, the ordinary wage earner. It is as to this type of bankrupt that the present abuse of bankruptcy discharge occurs.

S. Rep. No. 91-1173, 91st Cong., 2d Sess,
2 (1970)

One of the strongest arguments in support of passage of the bill was the dissatisfaction with State courts' handling of bankruptcy matters, coupled with the sense that the greater experience of the bankruptcy courts and more intense role of the federal courts in interpreting the federal bankruptcy law would be beneficial.

One of the strongest arguments in support of the bill is that, if the bill is passed, a single court, to wit, the bankruptcy court, will be able to pass upon the question of dischargeability of a particular claim and it will be able to develop an expertise in resolving the problem in particular cases. The State court judges, however capable they may be, do not have enough cases to acquire sufficient experience to enable them to develop this expertise. Moreover, even under the present system, in the last analysis, it is the U.S. Supreme Court which has the ultimate word on the construction of section 17 of the Bankruptcy Act. Section 17 makes provision for the debts to be released by a discharge and those which shall be excluded from a discharge. Since this is a Federal statute, the Federal courts necessarily have the final word as to the meaning of any terms contained therein.

S. Rep. No. 91-1173, 91st Cong. 2d Sess. 9 (1970) (Explanatory memorandum to accompany the bill, by the National Bankruptcy Conference.)

Since 1970, the federal bankruptcy and district courts have ruled many times on the fresh cash issue. More finely attuned to the legislative concept underlying the Bankruptcy Act and more knowledgeable concerning creditor practices than the State courts*, the federal courts have overwhelmingly favored limiting the exception to discharge in Section 17a(2) to the fresh cash advanced on the basis of a false financial statement where that loan was consolidated with previous debt untainted by such statement.** Nor has Congress shown any inclination to stem the tide of these decisions.***

*, **, *** (Footnotes on next page)

(Footnotes cont'd from previous page)

*HFC's fervent reliance on the correctness of state court decisions handed down between the 1960 and 1970 amendments is perplexing. For the most part, these decisions reflected the tendency of some state courts to add to the momentum created by an initial few decisions. See, e.g. Budget Fin. v. Haner, 436 P. 2d 722 (Idaho, 1968); Seaboard Fin. Co. v. Barnes, 378 Mich. 627, 148 N.W. 2d 756 (1967). There was no legislative history or other special insight guiding these State court judges that was not fully considered by the many federal and bankruptcy court judges who have subsequently adjudicated this question and reached a different conclusion. Undoubtedly, the thorough knowledge of the commercial context of these cases coupled with the better understanding of the goals of the Bankruptcy Act has contributed to the ability of the federal judiciary to reach the correct construction of Section 17a(2).

** For example, see the following decisions in which only the new money or "fresh cash" was held non-dischargeable In re Ellis, 400 F. Supp. 1112 (S.D.N.Y., 1975), (Carter, D.J.); In re McNee, 390 F. Supp. 271 (S.D.N.Y., 1975), (Metzner, D.J.); In re Fuhrman, 385 F. Supp. 1185 (W.D.N.Y., 1973) (Henderson, D.J.); In re Schuerman, 367 F. Supp. 1347 (E.D.Ky., 1973) (Swinford, D.J.); In re Soika, 365 F. Supp. 555 (W.D.N.Y., 1973) (Curtin, D.J.); In re Stanzione, No. 74-B-138 (E.D.N.Y., filed May 2, 1975) (Weinstein, D.J.). For a more complete listing of both reported and unreported decisions, see Townsend, "Fresh Cash"- Another Element of a Bankrupt's "Fresh Start", 31 U. of Miami L. Rev. 275, 284 n.53 (1977).

Matched against the careful reasoning and scholarly analysis of these decisions (see, e.g., In re Stanzione, supra (Weinstein, D.J.)), it is difficult to accord much weight to the contrary result reached in decision in In re Shade, No. Bk. 73-1018 (W.D.N.Y. July 24, 1974), (Burke, D.J.) (reprinted at A1 of Appellant's brief) which contains no real analysis.

** Two bills were pending in the last Congress which would have entirely recodified the Bankruptcy Act. The specific proposals concerning the Section 17a(2) exception are noteworthy. The National Conference of Bankruptcy Judges basically retained the present exception which in practice the case law had already limited. Section 4-506(a)(2) of H.R. 32 & S. 235, 94th Cong., 1st Sess. In contrast, the Commission on Bankruptcy Laws of the United States' proposal removed

(cont'd next page)

*** (con'd) entirely the consumer financial statement exception to dischargeability. Section 4-506 of H.R. 31 & S. 236, 94th Cong., 1st Sess. Of course the concluding of the legislative session without action on these bills and the introduction in the current Congress of H.R. 6 which recodifies Section 17a (2) as Section 523 without substantive change is not conclusive of current legislative intent, but is certainly indicative that there is no concerted effort in Congress to reverse the clear trend of recent federal court and bankruptcy court decisions to limit the exception to discharge to fresh cash.

HFC's charge of "bias" in favor of the debtor by the bankruptcy judges and by the federal judiciary is markedly inappropriate. To the extent that judicial adherence to Congressional intent betrays a "bias," Amicus respectfully submits that this "bias" is one in favor of giving full effect to Congressional purposes underlying the bankruptcy law. The legislative history confirms the well-reasoned federal and bankruptcy court decisions, including the one being appealed from, limiting the Section 17 a (2) discharge to the "fresh cash" advanced on the basis of a false financial statement. See cases cited at this brief, note at 20, supra. See also Appellee's brief at 10-16. As found by Judge Neaher, HFC did not even prove that Mr. Danns was delinquent in his payments on the prior loan and received an "extension" of time to pay it off, nor did HFC demonstrate that this was a "renewal" of a matured note. (A-83) Further, most states have enacted small loan statutes like New York Banking Law § 352 aimed at curbing abuses of small loan companies and either requiring consolidation of small loans or resulting in routine rewriting of loans for the creditors' convenience. Thus, "it is difficult to characterize the refinancing as being 'obtained' by the debtor within the meaning of Section 17 a (2)." In re Ellis, 400 F.Supp. 1112 (S.D.N.Y., 1975), (A-83). These statutes also severely diminish any argument that there was a creditor's "reliance" or debtor's "intent to deceive" to the full extent of the written loan. As found by Judge Neaher, "the

new cash represented the actual pecuniary loss flowing from reliance upon the fraudulent financial statement." (A-83)

Finally, any doubts as to the meaning of the statute or the intent of Congress must be resolved in favor of the bankrupt by this Court's narrow construction of the Section 17 a (2) exception to bankruptcy discharge. Gleason v. Thaw, 236 U.S. 558 (1915). Only this strict approach to the issues before the Court faithfully serves "the basic purpose of the Bankruptcy Act to give the debtor 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt...'" Lines v. Frederick, 400 U.S. 18, 19 (1970). See also Townsend, "Fresh Cash" -- Another Element of a Bankrupt's "Fresh Start," 31 U. of Miami L. Rev. 275, 280-286 (1977); In re Stanzione, No. 74-B-138 (E.D.N.Y., filed May 2, 1975) (Weinstein, D.J.); In re Soika, 365 F.Supp. 555, 556 (W.D.N.Y., 1975).

The full and inevitable implications of the position urged by HFC must be given careful consideration in deciding this particular case. Plainly, in asking this Court to rule against the bankrupt Mr. Danms, HFC invites this Court to overturn the body of current, well-reasoned federal and bankruptcy court decisions to the contrary. In so doing, HFC is seeking a judicial determination whose consequences would lead far beyond the particular facts and circumstances of this case. The result sought by HFC would violate the basic notions of fairness and equity embodied in the bankruptcy

EAGLE-A

law. Under HFC's theory, even the most minimal amount of additional money advanced would ensure the survival of large debts wholly untainted by fraud, thus creating a windfall for any creditor who could obtain a false financial statement and encouraging questionable practices by small loan lenders against the unwary debtor. This, coupled with the fact that bankruptcies are overwhelmingly consumer oriented with few or no assets available to distribute to satisfy creditors,* presents a real obstacle to the intended rehabilitative effect of the ultimate bankruptcy discharge. In Amicus' view, it is not far fetched to conclude that if HFC's view prevails in this case, thousands of low-income consumers would be left with large undischageable debts even after bankruptcy.

* For example, in 1975, 90% of all bankruptcy cases filed were consumer oriented, with few or no assets. Annual Report of the Director of the Administrative Office of the United States, 152-153 (1975).

CONCLUSION

For the reasons stated above and in the brief of the appellee, it is respectfully submitted that this Court should affirm the decision of the District Court.

Dated: May 3, 1977.

Respectfully submitted,

KALMAN FINKEL
Attorney-in-Charge
The Legal Aid Society
Civil Division

Anita Fisher Barrett

JOHN E. KIRKLIN
Director of Litigation
ANITA FISHER BARRETT, Of Counsel
The Legal Aid Society
Civil Appeals & Law Reform Unit
11 Park Place - 8th Floor
New York, New York 10007
Tel.: 962-4119, 227-2755

MORTON B. DICKER
THE LEGAL AID SOCIETY
11 PARK PLACE - 5th Floor
New York, New York 10007

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
HOUSEHOLD FINANCE CORPORATION,

Plaintiff-Appellant,

Docket # 77-5004

-against-

STIPULATION

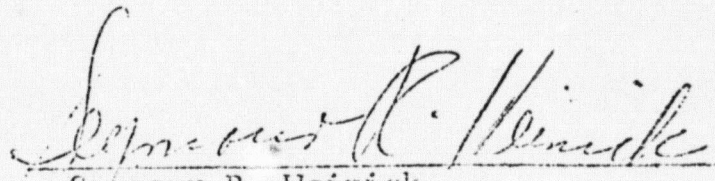
KEITH ORIN DANNS, a/k/a KEITH O.
DANNS, a/k/a KEITH DANNS,

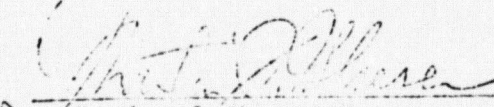
Defendant-Appellee
-----X

IT IS HEREBY STIPULATED and agreed by and between
the respective parties hereto that briefs of the following
as amici curiae may be filed in connection with the appeal:

Legal Aid Society of New York
N.Y.S. Consumer Finance Association

Dated: April 6th ,1977


Seymour R. Weinick
Attorney for Plaintiff-Appellant


Arthur J. Sachs
Attorneys for Defendant-Appellee

At a Special Term, Part II of the
Supreme Court of the State of New
York, in and for the County of New
York, at the Courthouse, 60 Centre
Street, New York, New York on the
14th day of March, 1977.

P R E S E N T :

HON. *Abraham J. Sellenoff*
Justice.

-----X	:	
STATE OF NEW YORK,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
HOUSEHOLD FINANCE CORPORATION,	:	<u>FINAL CONSENT</u>
	:	<u>JUDGMENT</u>
Defendant,	:	
	:	
Pursuant to General Business Law	:	
Article 22-A, Section 349.	:	
-----X	:	

40630/77

UPON READING AND FILING the Summons, the Verified Complaint, both dated February 24, 1977, the supporting Affidavit of Assistant Attorney General Stephen Mindell, sworn to February 24, 1977, and the answer, verified on March 1, 1977, and the Stipulation and Consent dated March 2, 1977, executed by defendant and its attorney, Frederick H. Block, Esq., in which defendant admits service of the summons and verified complaint and Supporting Affidavit waives the statutory 5-day notice pursuant to General Business Law § 349(c) and consents to the entry of this judgment without admitting any violation of law.

NOW, on motion of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for plaintiff (Assistant Attorneys General Stephen Mindell and Herbert Israel of counsel) it is

ORDERED, ADJUDGED AND DECREED, that this Court has jurisdiction of the subject matter and of the parties consenting hereto; and it is further

ORDERED, ADJUDGED AND DECREED, that HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents be and they hereby are enjoined, restrained and prohibited from contacting or soliciting any borrower whose indebtedness to HOUSEHOLD FINANCE CORPORATION was discharged in bankruptcy for the purpose of making a new loan where such loan is contingent or conditioned upon a reaffirmation of the debt that was discharged in bankruptcy by requiring that a portion of the proceeds of the new loan be applied to the payment of such discharged debt. Provided, however, that such prohibition shall not apply to contact or solicitation of any such borrower by general mailings directed generally to HOUSEHOLD FINANCE CORPORATION'S customers in the area of such borrower's residence; and it is further

ORDERED, ADJUDGED AND DECREED that HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and

agents be and they hereby are enjoined, restrained and prohibited from consummating any loan agreement with a borrower whose debt to HOUSEHOLD FINANCE CORPORATION was discharged in bankruptcy where a reaffirmation of such debt is made a condition of the new loan, unless:

a) at the time of the consummation of the new loan, there has been a voluntary consent of the borrower in signing a separate reaffirmation agreement by which he agrees to apply all or a specified amount of the proceeds of the new loan towards the debt discharged in bankruptcy;

b) said reaffirmation agreement affords such borrower the right to cancel such reaffirmation of the discharged debt, within 10 days from the date such borrower signed the promissory note evidencing the new loan;

c) said reaffirmation agreement contains a notice advising such borrower that in order to cancel such reaffirmation he should mail or deliver a signed and dated copy of the notice of cancellation, or other written notice, of his intent to cancel to HOUSEHOLD FINANCE CORPORATION at a business address to be specified therein; and

d) said reaffirmation agreement further contains a statement that the borrower has received, read and understands the disclosure statement as provided for herein; and it is further

ORDERED, ADJUDGED AND DECREED that in the event a borrower, whose outstanding indebtedness to HOUSEHOLD FINANCE CORPORATION has been discharged in bankruptcy, applies for a new loan from HOUSEHOLD FINANCE CORPORATION where the making of the new loan is conditioned upon a reaffirmation of the discharged indebtedness, then HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents, be and they hereby are ordered and directed to furnish to such borrower at the time a new loan agreement is made a written statement separate and distinct from the promissory note and other accompanying loan papers, which discloses in a clear, conspicuous manner, and in a size print of no less than 10-point bold type, as set forth in the annexed notice the following information:

1. The new loan is conditioned upon a portion of the proceeds being applied towards the loan discharged in bankruptcy;
2. The discharge in bankruptcy has full released the borrower from any legal obligation to repay any discharged debt;
3. The borrower is under no legal obligation to reaffirm the debt discharged in bankruptcy by applying to it any part or all of the proceeds of the new loan, or by any other means;

4. The precise amount financed of the new loan, the precise amount of the proceeds of such loan being applied towards the loan discharged in bankruptcy and the precise amount of the proceeds of the new loan being disbursed to or on behalf of the borrower;

5. The parties may negotiate with respect to the amounts of the new loan allocated towards the discharged loan and disbursed to or on behalf of the borrower respectively;

6. In the event the borrower agrees to reaffirm the outstanding indebtedness to HOUSEHOLD FINANCE CORPORATION discharged in bankruptcy, he is afforded the right to cancel such reaffirmation within 10 days from the date the promissory note is signed, and delivered;

7. In the event the borrower does not cancel such reaffirmation within the prescribed 10 day period, the note evidencing the debt discharged in bankruptcy is to be promptly returned to the borrower by HOUSEHOLD FINANCE CORPORATION marked paid or cancelled; and

8. In the event the borrower does cancel such reaffirmation within the prescribed 10 day period, the portion of the proceeds of the new loan which was applied towards the debt discharged in bankruptcy, shall be promptly credited in full, and

treated as a partial prepayment, to the new loan in accordance with the provisions of § 352 of the New York Banking Law provided, however, that the previously agreed upon payment schedule for the new loan shall be adhered to until the new loan, as reduced by the aforesaid credit, is paid; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event such borrower reaffirms an indebtedness to HOUSEHOLD FINANCE CORPORATION discharged in bankruptcy by means of agreeing to the application of all or a portion of the proceeds of the new loan towards the loan discharged in bankruptcy, and does not within 10 days thereafter cancel such reaffirmation as herein provided, HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents be and hereby are ordered and directed after the expiration of the cancellation period to mark the note paid or cancelled, and deliver such cancelled note to such borrower; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the borrower cancels such reaffirmation within the prescribed 10 day period, HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees, and agents be, and they hereby are ordered and directed to promptly credit in full, and treat as a partial prepayment, to the new loan, in accordance with the provisions of section 352 of the New York Banking Law, that portion of the

proceeds of the new loan which was applied towards the debt discharged in bankruptcy, provided however that the previously agreed upon payment schedule for the new loan shall be adhered to until the new loan as reduced by the aforesaid credit, is paid; and it is further

ORDERED, ADJUDGED AND DECREED, that HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents be, and they hereby are, ordered and directed to afford the right of cancellation of a reaffirmation of a debt discharged in bankruptcy to those borrowers to whom HOUSEHOLD FINANCE CORPORATION, since January 1, 1976, granted a new loan, conditioned upon all or part of the proceeds of such new loan being applied towards a debt discharged in bankruptcy, and who file a written complaint, deemed bona fide by the Attorney General's office, after due notification to HOUSEHOLD FINANCE CORPORATION, within 60 days from the date of the entry of this judgment with the office of the Attorney General or with HOUSEHOLD FINANCE CORPORATION to the effect that they did not understand the nature, scope, extent, or consequences of such reaffirmation. Such right of cancellation is to be exercised within 10 days of receiving written notification of such right from HOUSEHOLD FINANCE CORPORATION, which shall either promptly credit in full, in accordance with the above ordering paragraph, or, refund that portion of the proceeds of the new loan which was applied towards the debt discharged in bankruptcy, whichever is appropriate under the circumstances; and it is further

ORDERED, ADJUDGED AND DECREED, that HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents be, and they hereby are ordered and directed to file with the office of the Attorney General on or before July 1, 1977, an affidavit setting forth the manner and the extent to which it has complied with the provisions hereof; and it is further

ORDERED, ADJUDGED AND DECREED that in the event such borrower reaffirms an indebtedness to HOUSEHOLD FINANCE CORPORATION discharged in bankruptcy, HOUSEHOLD FINANCE CORPORATION, its successors, assigns, officers, employees and agents be and they hereby are ordered and directed to calculate such discharged debt in a sum no greater than the sum outstanding at the time the petition in bankruptcy was filed; and it is further

ORDERED, ADJUDGED AND DECREED, that nothing contained herein shall apply to a reaffirmation entered into by a borrower where no credit was extended him in connection with such reaffirmation; and it is further

ORDERED, ADJUDGED AND DECREED, that HOUSEHOLD FINANCE CORPORATION be and it hereby is ordered and directed to pay to the Attorney General of the State of New York the sum of \$2,000 in costs pursuant to CPLR § 8303(6); and it is further

ORDERED, ADJUDGED AND DECREED, that jurisdiction is retained by this Court for the purpose of enabling any of the parties of this proceeding to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this final consent judgment, for the modification hereof, or for the enforcement of compliance herewith, and for the punishment of any violation hereof.

E N T E R

March 15, 1977

Siled

N.Y. County

Clerk's office

H AJG

J.S.C.

IMPORTANT - READ

REAFFIRMATION AGREEMENT WITH CANCELLATION NOTICE AND STATEMENT OF RIGHTS OF BORROWER

STATEMENT OF RIGHTS

1. In order to obtain this new loan you will be required to repay all or part of your outstanding debt to HFC that was discharged in bankruptcy. However, you are under no legal obligation to do so.
2. Your discharge in bankruptcy has fully released you from any legal obligation to repay any part of your outstanding debt to HFC.
3. You have the right to bargain with HFC as to the amount of the new loan to be put towards your old loan.
4. You have the right to cancel within 10 days your agreement with HFC to apply an agreed amount to your old loan.
5. If you decide within 10 days that you want to cancel your agreement with HFC to apply an agreed amount to your old loan, tear off, date, sign and mail the bottom of this notice, below the dotted line to HFC at this branch office address.
6. If you do cancel, the amount applied to your old loan will be credited in full to your new loan, but you are required to meet your payments as scheduled.
7. If you do not cancel within 10 days your agreement with HFC to apply an agreed amount to your old loan, then the note representing your obligation under the old loan will be marked paid and cancelled and promptly returned to you by HFC.

AGREEMENT

The following is a statement of what HFC and I have agreed upon:

HFC has agreed to make me a new loan in the amount financed of \$ _____

I have agreed that HFC will apply to my old loan that was discharged in bankruptcy \$ _____.

There will be disbursed to me or on my behalf from the new loan the sum of \$ _____.

Amount financed on new loan _____

Amount applied to old loan _____

Amount actually disbursed _____

By signing the agreement, I acknowledge that I have read and understood its terms and that I have received a copy. I understand I am under no legal obligation to enter into such an agreement.

Date _____ Signature _____

Witness, representative of HFC _____

CANCELLATION NOTICE

TO: HFC:

Address: _____

City: _____ State _____ Zip _____

I hereby cancel my agreement with HFC to apply an agreed amount to my old loan.

Date _____ Signature _____

-----X

CONSENT AND STIPULATION

2. That the within Stipulation and Consent is entered into by the defendant as its own free and voluntary act with full knowledge and understanding of the nature of the action and the obligations and duties imposed upon it by the judgment consented to be entered herein and that no offer, agreements or inducements

of any nature whatsoever have been made to it by the Plaintiff herein or by its attorney or any employee of the Attorney General's office to procure this Consent and Stipulation.

3. Defendant, HOUSEHOLD FINANCE CORPORATION, expressly waives the provisions of General Business Law Section 349, Subdivision C requiring the Attorney General to give it notice of its contemplated action and further expressly waives its right under said subdivision to show in writing why proceedings should not be instituted against it.

4. That the Defendant acknowledges receipt of a copy of the annexed proposed judgment and hereby consents to the making and the entry thereof without further notice and hereby waives notice of any application for the entry thereof.

5. That the Defendant herein is represented by its attorney, Frederick H. Block, Esq. 919 Third Avenue, New York, New York.

6. The Attorney General represents that it initiated its investigation herein as a result of the referral of a consumer complaint to it by the New York State Banking Department. Further, the Attorney General represents that the New York State Banking Department has reviewed and approved the annexed Consent Judgment.

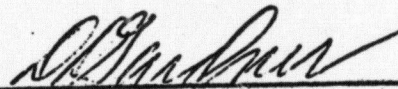
7. The parties agree that the Defendant enters into this Consent without an admission that it has violated the law and that it accepts the Attorney General's allegations in the complaint

and affidavit for settlement purposes of this matter only and without conceding the correctness thereof.

That the Defendant herein agrees to pay the Attorney General the sum of \$2,000 costs pursuant to the provisions of § 8303(6) Civil Practice Law and Rules.

Dated: New York, New York
March 2, 1977

HOUSEHOLD FINANCE CORPORATION
By



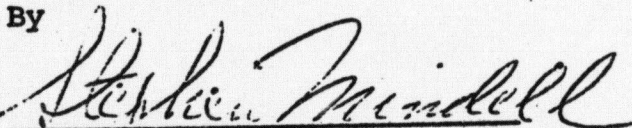
DONALD D. GARTNER
Vice President

cf
P8

Approved:

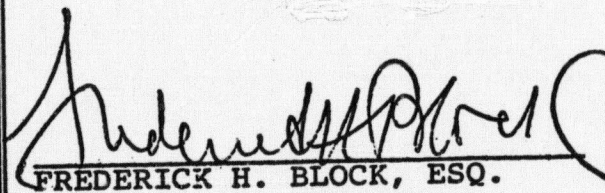
LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

By



STEPHEN MINDELL
Assistant Attorney General
in Charge, Bureau of Consumer
Frauds and Protection

(Corporate Seal)



FREDERICK H. BLOCK, ESQ.
Attorney for Defendant

STATE OF ILLINOIS)
COUNTY OF COOK) ss:

On the 24 day of March, 1977 before me came
DONALD D. GARDNER to me known, who, being by me duly sworn,
did depose and say that he resides in

Arlington Heights, Illinois

that he is the Vice President of Household Finance Corporation
the corporation described in, and which executed the foregoing
instrument; that he knows the seal of said corporation; that
the seal affixed to said instrument is such corporate seal;
that it was so affixed by order of the board of directors
of said corporation and that he signed his name thereto by
like order.

Nancine A. Meyer
Notary Public.
My Comm. Expires: 3-25-79

STATE OF ILLINOIS, }
COOK COUNTY. } ss. I, STANLEY T. KUSPER, JR., County Clerk of the County of Cook, Do HEREBY CERTIFY that I am
the lawful custodian of the official record of Notaries Public of said County, and as such officer am duly authorized to issue

certificates of magistracy, that Nancine A. Meyer
whose name is subscribed to the proof of acknowledgment of the annexed instrument in writ-
ing, was, at the time of taking such proof of acknowledgment, a Notary Public in and for
Cook County, duly commissioned, sworn and acting as such and authorized to take acknowl-
edgments and proofs of deeds or conveyances of lands, tenements or hereditaments, to be
recorded, in said State of Illinois, and to administer oaths; all of which appears from the
records and files in my office; that I am well acquainted with the handwriting of said Notary
and verily believe that the signature to the said proof of acknowledgment is genuine; and
further, that the annexed instrument is executed and acknowledged according to the laws of
the State of Illinois.

The law of Illinois does not require the impression of the Seal of a Notary Public to be
filed in the County Clerk's Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the County
of Cook at my office in the City of Chicago, in the said County, this 2
day of Mar. 1977

Stanley T. Kusper, Jr. County Clerk.
Deputy R. Williams Deputy.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

HOUSEHOLD FINANCE CORPORATION,

Defendant,

Pursuant to General Business Law,
Article 22-A, Section 349.

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED TO answer the complaint in this action and serve a copy of your Answer, or if the complaint is not served with the summons, serve a notice of appearance on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: New York, New York
February 24, 1977

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Plaintiff
Office and P.O. Address
Two World Trade Center
New York, New York 10047

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
STATE OF NEW YORK, :
 :
 Plaintiff, :
 :
 -against- :
 :
 HOUSEHOLD FINANCE CORPORATION, : COMPLAINT
 :
 Defendant, :
 :
 Pursuant to General Business Law :
 Article 22-A, Section 349 :
 :
 ----- X

The State of New York by its attorney LOUIS J. LEFKOWITZ,
Attorney General of the State of New York, respectfully alleges
upon information and belief:

AS AND FOR A FIRST
CAUSE OF ACTION
AGAINST DEFENDANT

1. That at all times hereafter mentioned, HOUSEHOLD FINANCE CORPORATION (referred to as HFC) was and is a Delaware corporation duly authorized to do business in the State of New York. Its principal office for this region is now located at 26 Main Street, Chatham, New Jersey.

2. That HFC is duly licensed as a licensed lender ("small loan company") pursuant to Article IX of the Banking Law and operates 108 branch loan offices in this state.

3. That at least since January 1, 1976 and continuing to date, in the course and conduct of its small loan business in New York, HFC has made loans to customer borrowers, certain of whom have subsequently filed Voluntary Bankruptcy Petitions and have been duly adjudged as bankrupts pursuant to the Bankruptcy Act.

4. That said bankrupts have been granted Discharges and have been released from all their dischargeable debts including their outstanding indebtedness to HFC.

5. That within several months subsequent to the granting of the respective discharges, HFC with full knowledge thereof, embarked on an active and intensive campaign of new loan solicitation specifically directed to such bankrupts.

6. That said campaign of new loan solicitation was conducted by means of repeated telephone calls to the bankrupts at home and at business, letters, notes and other written materials addressed to the bankrupts, and personal visits from HFC personnel to the bankrupts' homes.

7. That HFC represented to each bankrupt that the purpose of the loan solicitation was to extend the opportunity for each such bankrupt to obtain a new loan of cash proceeds in a specified amount at a time when his credit was otherwise seriously impaired by the prior bankruptcy proceeding.

8. That, in fact, a material additional purpose of HFC's loan solicitation specifically directed to bankrupts was to effect a reaffirmation of the debt which had been discharged in bankruptcy by requiring that a significant portion of the proceeds of the new loan be applied to payment of such discharged debt. —

9. That it was HFC's company policy to extend a new loan to a borrower who previously obtained a discharge in bankruptcy and was released from a dischargeable debt owed to HFC, only upon the condition that said borrower agree to reaffirm such discharged debt in the manner set forth in paragraph 8 above.

10. That HFC failed to disclose to said bankrupts in the course of its loan solicitation specifically directed to them, that the granting of any new loan was strictly conditional on the reaffirmation of the discharged indebtedness owed to it in the manner specified above in paragraph 8.

11. That as a result of the aforesaid conduct, a substantial number of New York borrowers, each having had an outstanding indebtedness to HFC which had recently been discharged in bankruptcy may have been induced to accede to the solicitation of a new loan under the erroneous and mistaken belief that no such conditions were attached to the proposed new loaning of money.

12. That by its failure to disclose such material term and condition for the loaning of money to the specified borrowers, HFC has engaged in deceptive and misleading loan solicitation within the meaning and intent of Article 22-A of the General Business Law.

AS AND FOR A SECOND
CAUSE OF ACTION
AGAINST DEFENDANT

13. That Plaintiff repeats, reiterates and realleges each and every allegation of the complaint numbered "1" through "12" inclusive and includes herein all the facts and circumstances therein alleged and recites them with the same force and effect as if set forth at length.

14. That upon advising HFC that they were willing to become obligated for a new loan in the specified amount offered, HFC instructed said borrowers to appear at a particular convenient branch loan office to consummate the transaction.

15. That prior to the time arranged for the consummation of the loan, HFC prepared the necessary loan documents for the new loan including the promissory note evidencing the indebtedness.

16. That HFC unilaterally determined to use the portion of the new loan proceeds which it would apply towards payment of the discharged indebtedness previously incurred by it.

17. That at the appointed time for the consummation of the loan, said borrowers appeared at the specified HFC branch office to sign the loan papers and to receive the proceeds.

18. That only at such time did HFC first disclose by oral representation, that as a condition for the granting of the new loan of money, it would be necessary for the borrower to agree to reaffirm the discharged debt by applying a unilaterally determined specified portion of the new loan proceeds towards the payment of the discharged debt.

19. That HFC failed to make full and adequate disclosure to such borrowers of the nature and consequences of an agreement to reaffirm a discharged debt and of the borrower's legal right not to do so in light of his bankruptcy discharge.

20. That HFC failed to disclose to such borrowers that the stated portion of the new loan proceeds to be applied to the discharged debt could be the subject of bargaining between the parties.

21. That HFC knew that said borrowers lacked the requisite knowledge and experience in commercial matters or the bargaining power to enable them under the circumstances, as alleged herein,

to make a meaningful choice, in a voluntary, intelligent and knowing manner, with respect to any agreement to reaffirm a discharged debt or the amount to be applied thereon.

22. That HFC knew and intended that its grossly superior bargaining position, under the circumstances, would result in such an agreement being readily obtained on whatever unilateral terms it dictated without any understanding consent by the borrower.

23. That HFC knew that the atmosphere and circumstances surrounding the loan meeting, including but not limited to the borrower's expectation and strong desire for an immediate receipt of cash proceeds and his knowledge that a loan was undoubtedly not available elsewhere because of his poor credit standing, were such as to be not conducive to the exercise of reasoned consideration or understanding and voluntary consent for any agreement to reaffirm the discharged debt on the terms demanded.

24. That said borrowers agreed without understanding consent to the reaffirmation terms and conditions of the new loan, as set forth herein, as required by HFC, with no negotiation or bargaining of any nature with respect thereto between the parties.

25. That in a substantial number of instances HFC failed to provide said borrowers with a reaffirmation agreement setting forth the terms and conditions of the

reaffirmation of the discharged debt with any accounting of the amounts so applied.

26. That in a substantial number of instances, the amount of the new loan proceeds applied by HFC to the discharged debt exceeded the amount of new loan proceeds disbursed to the borrower.

27. That under the circumstances as alleged hereinabove, it is the position of the Attorney General's office that HFC took unconscionable advantage of the borrowers in obtaining their agreement to reaffirm the debt discharged in bankruptcy and in the application of the new loan proceeds with respect thereto.

28. That by reason of the foregoing, HFC has engaged in unconscionable acts and practices constituting a deceptive trade practice within the meaning and intent of Article 22-A of the General Business Law during the times set forth.

29. That the aforestated business acts and practices of defendant as alleged herein were and are all to the prejudice of the public.

30. That it is the firm belief of the Attorney General that this action should be brought on behalf of and in the interest of the public of the State of New York and unless the relief sought be granted the harm to the public will continue.

WHEREFORE, Plaintiff demands judgment:

a) Pursuant to General Business Law, Article 22-A, enjoining, restraining and prohibiting the respondent from further engaging in conduct violative of the statute as alleged herein and directing restitution to aggrieved consumers.

b) Granting to the Plaintiff such other further relief as to the Court may seem just and proper together with the costs of this action against such defendant pursuant to CPLR § 8303, Subdivision 6.

Dated: New York, New York
February 24, 1977

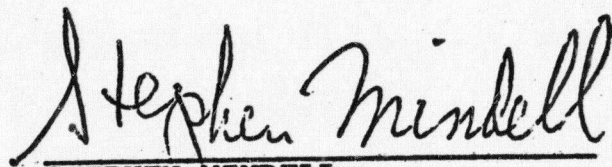
LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Plaintiff
Office and P.O. Address
2 World Trade Center
New York, New York 10047

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

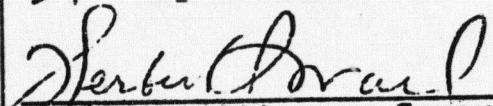
STEPHEN MINDELL, being duly sworn, deposes and says:

That he is the Assistant Attorney General in Charge of the Bureau of Consumer Frauds and Protection in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and is duly authorized to make this verification.

That he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.


STEPHEN MINDELL

Sworn to before me this
24 day of February, 1977


Assistant Attorney General

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
:
STATE OF NEW YORK,
:

Plaintiff,
:

-against-
:

AFFIDAVIT
:

HOUSEHOLD FINANCE CORPORATION,
:

Defendant,
:
:

Pursuant to General Business Law
Article 22-A, Section 349.
-----X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

STEPHEN MINDELL, being duly sworn deposes and says:

1. I am an Assistant Attorney General of the State of New York in Charge of the Bureau of Consumer Frauds and Protection and am familiar with the facts and circumstances herein and the facts hereafter set forth are based upon information on file with the Bureau of Consumer Frauds and Protection.

2. This affidavit is made in support of the relief requested in the complaint herein, pursuant to General Business Law, Article 22-A, Section 349. No previous request has been made for the relief sought herein.

3. As a result of the referral of a consumer complaint to the Attorney General's office by the New York State Banking

Department, the Bureau of Consumer Frauds and Protection commenced an investigation into the practice engaged in by defendant of soliciting and negotiating new loans with customers who had obtained a discharge in bankruptcy of a previous indebtedness to Household Finance Corporation. This investigation revealed the following:

4. Household Finance Corporation is a Delaware corporation duly authorized to do business in New York and a licensed lender pursuant to Article IX of the Banking Law with its principal office for the New York region at 26 Main Street, Chatham, New Jersey.

5. In the course and conduct of its business, Household Finance Corporation has followed an expressed policy of actively soliciting those borrowers whose indebtedness to it was discharged in bankruptcy for the purpose of granting new loans conditioned upon the reaffirmation of such discharged debt by having all or part of the proceeds of the new loan applied towards the debt discharged in bankruptcy.

6. Investigation further revealed that in a number of instances, Household Finance Corporation actively and intensely solicited debtors that had obtained a discharge in bankruptcy of an indebtedness to Household Finance Corporation with letters and phone calls and even personal visits to the debtors' homes enticing them to apply for new loans to the extent that in many cases the

debtors did accept Household Finance Corporation's offer and accepted another loan from Household Finance Corporation under the prescribed conditions set by HFC.

7. In many of the instances reviewed by the Attorney General's office, the borrowers claimed they were not informed at the time of the solicitation or other contact, until immediately prior to the signing of the loan agreement, that a condition of the new loan would be a reaffirmation or revival of the old loan previously discharged. In fact, in some instances, no mention of the old loan was made at all to the borrower initially so that the borrower was lead to believe that any new loan extended by Household Finance Corporation would bear no relationship to this discharged debt.

8. However, when it was brought to the attention of the borrower, at Household Finance Corporation's office immediately prior to the signing of the loan papers, that any new loan was conditioned upon applying a specified amount of the new proceeds towards the discharged debt, the borrowers had little or no time to reflect on their decision. They were in desperate need for ready cash so they signed and obligated themselves to the new loan, the proceeds of which were only partially disbursed to them and the remainder was applied to the discharged debt.

9. Investigation has revealed that in most cases all the papers necessary to complete a loan transaction were prepared in advance and awaited the borrower's signature. Further that the amount to be applied towards the discharged debt was a non-negotiated arbitrary amount determined by the particular branch without conferring or consulting with the borrower or in any way a result of a bargaining process.

10. Household Finance Corporation knew that said borrowers lacked the requisite knowledge and experience in commercial matters or the bargaining power to enable them under the circumstances, as alleged herein, to make a meaningful choice, in a voluntary, intelligent and knowing manner, with respect to any agreement to reaffirm a discharged debt or the amount to be applied thereon.

11. Household Finance Corporation knew and intended that its grossly superior bargaining position, under the circumstances, would result in such an agreement being readily obtained on whatever unilateral terms it dictated without any understanding consent by the borrower.

12. Household Finance Corporation knew that the atmosphere and circumstances surrounding the loan meeting, including but not limited to the borrower's expectation and strong desire for an immediate receipt of cash proceeds and his knowledge that a loan

was undoubtedly not available elsewhere because of his poor credit standing, were such as to be not conducive to the exercise of reasoned consideration or understanding and voluntary consent for any agreement to reaffirm the discharged debt on the terms demanded.

13. Said borrowers agreed without understanding consent to the reaffirmation terms and conditions of the new loan, as set forth herein, as required by HFC, with no negotiation or bargaining of any nature with respect thereto between the parties.

14. Household Finance Corporation failed to provide said borrowers with any written agreement setting forth the terms and conditions of the reaffirmation of the discharged debt or with any accounting of the amounts so applied.

15. In a substantial number of instances, the amount of new loan proceeds applied by HFC to the discharged debt exceeded the amount of new loan proceeds disbursed to the borrower.

16. In fact, some borrowers were unaware of the actual amounts of the proceeds that were applied to the old loan and that were disbursed, until it was brought to their attention by the Attorney General's office, as no adequate disclosure of these figures was made by Household Finance Corporation's personnel.

17. At least since January 1, 1976, a substantial number of New York borrowers accepted the solicitation of Household Finance Corporation and obligated themselves for new loans.

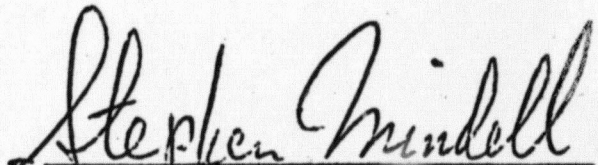
18. Under the circumstances as alleged hereinabove Household Finance Corporation took unconscionable advantage of the borrowers in obtaining their agreement to reaffirm the debt discharged in bankruptcy and in the application of the new loan proceeds with respect thereto.

19. In a random sample of cases, as indicated in the chart below, the amount of the new loan proceeds applied to the discharged debt generally exceeded the amount of the proceeds actually disbursed to the borrower.

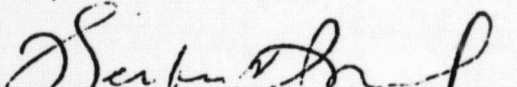
<u>Consumer</u>	<u>Amount Discharged</u>	<u>New Loan Amount</u>	<u>Proceeds Disbursed</u>	<u>Proceeds Applied to Discharged Debt</u>
A	\$800	\$1,508	\$1,100	\$400
B	\$1,800	\$1,908	\$512	\$1,400
C	\$1,700	\$2,372	\$1,100	\$1,200
D	\$3,450	\$2,500	\$1,900	\$600
E	\$2,700	\$2,500	\$1,000	\$1,500
F	\$292	\$1,851	\$1,559	\$292

The Attorney General's investigation suggests that the conduct of Household Finance Corporation, as alleged herein, has the direct tendency and capacity to strip from impoverished debtors then protection of the bankruptcy law in granting them discharges from their outstanding indebtedness. The crush of financial burdens caused debtors in instances to agree to the conditions of Household Finance Corporation in granting a new loan, no matter how improvident the resulting agreement may have been. The annexed proposed Consent Judgment herein attempts to draw a balance by both enforcing legitimate loan obligations and by protecting debtors from improvident transactions brought on by dire personal financial stress.

WHEREFORE, the Plaintiff requests that the relief sought herein be granted.


STEPHEN MINDELL

Sworn to before me this
24 day of February 1977.


Assistant Attorney General

SUPREME COURT OF THE STATE
OF NEW YORK : COUNTY OF
NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

HOUSEHOLD FINANCE CORPORA-
TION,

Pursuant to General Business
Law Article 22-A, Section 349

VERIFIED ANSWER

FREDERICK H. BLOCK

ATTORNEY FOR Defendant

919 THIRD AVENUE, NEW YORK, N. Y. 10022

(212) 752-4433

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
STATE OF NEW YORK, :

Plaintiff, :

-against- :

HOUSEHOLD FINANCE CORPORATION, :

Defendant. :

Pursuant to General Business Law :
Article 22-A, Section 349
-----x

VERIFIED ANSWER

HOUSEHOLD FINANCE CORPORATION, by its attorney
Frederick H. Block, for its answer to the complaint herein,
respectfully shows and alleges:

FIRST: Admits the allegations contained in
paragraphs numbered 1, 2, 3 and 4.

SECOND: Denies each and every allegation contained
in paragraphs numbered 10, 11, 12, 16, 18, 19, 20, 21, 22,
23, 24, 25, 28 and 29.

THIRD: Denies each and every allegation contained
in paragraphs numbered 5, 6 and 7, except admits solicitation
of new loans from the bankrupts referred to.

FOURTH: Denies each and every allegation contained in paragraph numbered 8 except admits that reaffirmations were sought.

FIFTH: Denies each and every allegation contained in paragraph numbered 9 except admits that reaffirmations were sought in some instances.

SIXTH: Denies each and every allegation contained in paragraph numbered 14 except admits that upon reaching agreement said borrowers were requested to appear as alleged.

SEVENTH: Denies each and every allegation contained in paragraph numbered 15 except admits that the necessary loan documents were prepared.

EIGHTH: Denies each and every allegation contained in paragraph numbered 17 except admits that borrowers appeared, signed loan papers and received the proceeds after agreement had been reached.

NINTH: Denies each and every allegation contained in paragraph numbered 26 except admits that the amount of the new loan proceeds applied by HFC to the discharged debt exceeded the amount of the new loan proceeds disbursed to the borrower in some instances.

TENTH: Denies, with respect to the allegations of paragraph numbered 27, taking any unconscionable advantage, but admits that the position of the Attorney General's office may be as alleged.

ELEVENTH: Denies, with respect to the allegations of paragraph numbered 30 that any harm to the public is involved, but admits that this may be the belief of the Attorney General.

WHEREFORE, the defendant demands judgment dismissing the complaint and awarding it such costs and other relief as may be just and proper.

FREDERICK H. BLOCK
Attorney for Defendant
919 3rd Avenue
New York, N.Y. 10022
(212) 752-4433

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

FREDERICK H. BLOCK being duly sworn, deposes
and says:

I am the attorney for the defendant in the within
action. I have read the foregoing answer and know the
contents thereof; the same is true to my own knowledge,
except as to the matters therein stated to be alleged on
information and belief, and as to those matters I believe
them to be true.

The reason this verification is made by me and
not by the defendant is that the defendant is not a resident
of the County of New York.

Sworn to before me this
1st day of March, 1977.

Pamela Moorhead

PAMELA MOORHEAD
Notary Public, State of New York
No. 31-4632954
Qualified in New York County
Commission Expires March 30, 1978

Frederick H. Block
Frederick H. Block

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

HOUSEHOLD FINANCE CORPORATION,

Plaintiff-Appellant,

No. 77-5004

-against-

KEITH ORIN DANNS, a/k/a KEITH O. DANNS,
a/k/a KEITH DANNS,

Defendant-Appellee

CERTIFICATE
OF SERVICE

I certify that I have mailed two copies of the
enclosed Amicus Curiae brief to Sachs and Spector, P.C.,
Attorney for Defendant Appellee, 570 Seventh Avenue,
New York, New York 10018.

This 4th day of May, 1977.

Anita Fisher Barrett

Anita Fisher Barrett
Associate Appellate Attorney
The Legal Aid Society
Civil Appeals and Law Reform Unit
11 Park Place--8th floor
New York, New York 10007

Sir:
Please take notice that the within is a true
copy of a
this day duly entered herein in the office of
the Clerk of
Dated, N.Y., .19

Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
To

Attorney for

Sir:--

Please take notice that the within
will be presented for settlement and signature
herein to the Hon.
one of the judges of the within named Court, at

in the Borough of
City of New York, on the day of

19 , at M.
Dated, N.Y., .19

Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
To

Attorney for

SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

HOUSEHOLD FINANCE CORPORATION,

Defendant,

Pursuant to General Business
Law, Article 27-A, Section 349.

FINAL CONSENT JUDGMENT
CONSENT OF THE POPULATION
SUMMONS, VERIFIED COMPLAINT,
AFFIDAVIT

LOUIS J. LEFKOWITZ,
Attorney General

Plaintiff
Attorney for.....

Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
Tel. 488-7450

Personal service of a copy of

within

is admitted this day of

.....19